

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

FORD MOTOR COMPANY

Plaintiff,

v.

NATIONAL INDEMNITY COMPANY,

Defendant.

Civil Action No. 3:12-cv-839

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO ISSUE LETTER OF REQUEST**

Defendant National Indemnity Company (“NICO”) moves this Court to issue a Letter of Request directed to Niedersächsisches Justizministerium requesting the examination of Mr. John Yacoub by deposition. A draft of the Letter of Request is attached as Exhibit 1 to this motion.

Pursuant to Article 1 of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Convention”), a judicial authority of a signatory state may request the competent authority of another signatory state to obtain evidence by means of a Letter of Request. *See* Hague Convention on the Taking of Evidence in Civil or Commercial Matters ch. I, Oct. 7, 1972, 23 UST 2355. Germany and the United States are both signatories to the Hague Convention. *Id.* Pursuant to its authority in Article 2, Germany has designated Niedersächsisches Justizministerium as its competent authority to receive Letters of Request. Thus, this Court may properly issue a Letter of Request to the Niedersächsisches Justizministerium. *Id.* Pursuant to Federal Rule of Civil Procedure 28(b), Letters of Request shall be issued on application and notice.

Defendant NICO has moved for the issuance of this Letter of Request because discovery has been sought from Mr. Yacoub regarding matters at issue in this lawsuit. Mr. Yacoub has knowledge of the Aggregate Stop Loss Policies (the “ASLP”), including HDI-Gerling’s handling of the ASLP claims at issue in this litigation. Because this information is relevant to NICO’s defenses, NICO requests this testimony for use at trial.

Pursuant to Local Rule 7(E), counsel for NICO has conferred with counsel for Ford regarding this motion. Ford consents to the motion subject to the following reservation of rights:

Mr. Yacoub has been on NICO’s initial disclosures since January 31, 2013, and a disclosed NICO/Resolute witness going back to 2011. NICO is only now seeking to initiate the Hague process, perhaps for tactical reasons. The fact discovery cutoff in this case is July 20, and expert reports are due in advance of that. In view of this, Ford reserves the right to seek the preclusion of Mr. Yacoub’s testimony if his deposition is not conducted sufficiently in advance of those dates, to avoid prejudice to Ford.

NICO disputes Ford’s position regarding the timeliness of this motion and will reserve its right to respond in full should Ford move to exclude the testimony of Mr. Yacoub.

NICO respectfully requests that this Court grant its motion to issue the Letter of Request for the deposition of John Yacoub submitted as Exhibit 1 to this Motion.

DATED: May 22, 2013

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Certificate of Service

I certify that on the 22nd day of May 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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